IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.7552 OF 2005

Vijaykumar Swami .. Applicant
Versus
The Sate of of Maharashtra .. Respondent

Mr.Shekhar Ingawale for applicant
Mrs.S.D.Shinde, A.P.P. for State.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 29th November 2005.
P.C.

. Applicant who is arrested on 31st October 2005 by Shahupuri Police station at Kolhapur along with others in C.R.No.167 of 2005 for offences punishable under sections 302, 307, 506 read with 34 I.P.C. has applied for bail to this Court upon rejection of his application for similar relief prior to the filing of charge sheet and even thereafter, by the trial court.

2. Specific case set up in the present application is that the complainant and the deceased were serving in one students laundary. On 29th July 2005, there was some dinner arranged by the owner of the laundry and he had attended the same. Workers serving in the laundry had gathered at the venue of the said dinner. Deceased and his friend were proceeding to Hotel Food Land. At that point of time, one Jameer pushed the said deceased. Deceased was abused by the said Jameer. Deceased returned to the laundary and narrated the incident to complainant and others. According to prosecution, Jameer along with present applicant and one more person came to the laundry. They threatened Sunil and rushed towards him. At that time the deceased took up one stick in the laundary and was rushing towards the said Jameer @ pandya. Complainant along with some persons came outside and tried to intervene but the said Jameer snatched stick from the hands of deceased and assaulted him on his

head, due to which he fell down. There are cross fights and number of persons are involved. The incident is triggered as alleged by the pushing of the deceased and his subsequent fight with others at site. It is this incident which is complained of.

2. As far as role of the present applicant therein is concerned, he is supposed to have assaulted with fist and kick blows. The injured witnesses have not given any details of the said injuries, nor according to the applicant corraborated version of complainant. All that is alleged as far as applicant is concerned is administration of fist and kick blows. No weapon has been recovered at his instance. He was not identified at the I.P. Prima facie It is the accused No.1 who has assaulted the deceased on his head with wooden stick. Counsel for applicant also pointed out that Criminal Application No.384 of 2005 which was filed by

Jayawant Chavan has been allowed and he has been enlarged on bail. He further points out that this fact was specifically brought to the notice of the sessions judge. The learned Sessions Judge in his two orders has noted this fact. After investigation is complete, in the subsequent order what is observed is that other evidence could not be brushed aside. Learned Judge has observed thus:-

> "5. ... It is true that only accused No.1 has been identified in T.I. parade by the witness. However, because of this fact the other evidence on record could not be brushed aside. The court has to consider the evidence in totality. The fact could not be denied that one innocent person has lost his life merely because of overt act of the accused. Considering the nature of attack carried out and the co-ordination between the

> accused, it could not be said that there was no common intention but it reflects that the accused did share the common intention. Considering the pendency of matters before the sessions courts, the trial is not going to take long and could be finished within six months at the most. If the accused is released on bail, considering the serious charge he is likely to flee, moreover, if he is at large the witnesses may be intimidated. Similarly the accused who is released on bail could not be put at par with this accused as his name was not involved in the F.I.R. and he is subsequently added."

3. In my view, the aforesaid circumstances have not been substantiated by any material other than what was already before the Court. After charge sheet is filed and the investigations are

complete, a person like applicant with no criminal antecedents and a very limited role cannot be treated differently from the person who is presently enlarged on bail. Mrs.Shinde, A.P.P. points out that the applicant has no criminal antecedents. The above facts viz., no recovery at the instance of the applicant is also not disputed by the prosecution. In these circumstances, applicant deserves to be enlarged on bail. Hence, following order:-

i) The applicant shall be enlarged on bail in connection with C.R.No.167 of 2005 registered with Shahupuri Police Station, Kolhapur in the sum of Rs.15,000/- with one or two sureties in the like amount.

ii) Applicant shall report to the Shahupuri Police station twice a week on every Monday and Thursday between 5.00

p.m. and 7.00 p.m. till the conclusion of trial.

iii) Applicant shall not directly, or indirectly make any inducement or threat to any prosecution witnesses and shall not in any manner tamper with prosecution evidence.

iv) Applicant shall cooperate with the learned Trial Judge for expeditious disposal of the trial. Any attempt by the applicant to delay the trial may be a ground for cancellation of bail.

v) Any observation made in this order shall not be construed as any findings or any expression of opinion on the merits of the case at the time of trial.

vi) Application is disposed of in above terms.

vii) The parties to act upon an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)